

REMARKS

This paper is in response to the Office Action dated June 27, 2006. No claims are amended. Claims 1 – 10 are in the application.

By way of summary, the presently claimed invention relates to a method of inhibiting the formation of Coniferophyta pollen, which comprises applying a pollinosis inhibiting effective amount of a composition comprising a prohexadione compound to the Coniferophyta plant being treated. None of the cited references, whether taken alone, or in any combination, disclose, teach or suggest the presently claimed method.

Applicants respectfully traverse the rejection of claim 1 under 35 U.S.C. §112, first paragraph, as not being enabled by the disclosure. More specifically, the Examiner contends that the word “inhibiting” in the claims should be interpreted to mean “[a]n absolute, total inhibition of pollen formation ...”. Applicants respectfully submit that the Examiner is interpreting the word “inhibiting” in a manner akin to the words “preventing” or “prohibiting”. However, those skilled in the art will appreciate that the term “inhibiting” in the context of the present invention means “to decrease the rate of action of or stop (pollinosis)”. This meaning is completely consistent with the teaching provided by the specification and is, therefore, fully enabled thereby. Reconsideration and withdrawal of the §112(1) rejection of claim 1 are earnestly requested.

Applicants respectfully traverse the rejection of claims 1 - 10 under 35 U.S.C. §103(a) “as being unpatentable over the combined teachings of Bakholdina (SU 1005724, Chaudhury¹, and Nakaseko et al. (US 5,665,680).

With respect to “Bakholdina”, Applicants invite the Examiner’s attention to MPEP 706.02(II) which provides in pertinent part:

Citation of and reliance upon an abstract without citation of and reliance upon the underlying scientific document is generally inappropriate where both the abstract and the underlying document are prior art. See Ex parte Jones, 62 USPQ2d 1206, 1208 (Bd. Pat. App. & Inter. 2001) (unpublished).

To determine whether both the abstract and the underlying document are prior art, a copy of the underlying document must be obtained and analyzed. If the document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in

¹ Chaudhury, Abdul M. “Nuclear Genes Controlling Male Fertility” *The Plant Cell* 5:1277-1283. 1983.

support of the rejection. The record must also be clear as to whether the examiner is relying upon the abstract or the full text document to support a rejection.

Applicants respectfully request the Examiner to clarify the record as to whether reliance is being placed on the Bakholdina abstract, the underlying document, or both, in support of the outstanding §103 rejection. If the Examiner intends to rely (in-whole or in-part) on the underlying SU patent document, Applicants request both a complete translation of the underlying document and a reopening of prosecution to allow Applicants to review the evidence being presented.

Regarding the English abstract of Bakholdina, Applicants take issue with the Examiner's interpretation. The abstract provides that "[t]he sowing properties of the seeds are increased by pretreating the tree-source of pollen with 0.04-0.06% gibberellin A3 soln. ... during ... (*inter alia*) the period of pollen formation." No suggestion regarding stimulation of pollen production is seen in the abstract as alleged by the Examiner (A translation of the underlying document is again requested.). Moreover, there clearly is no suggestion that a prohexadione compound could be used to inhibit the formation of pollen.

The Examiner focuses on an excerpt on page 1278 of Chaudhury in support of the rejection. More specifically, Chaudhury mentions that the application of GA₃ (gibberellic acid) to a mutant tomato plant (dicot, angiosperm) can restore pollen function. The author then speculates that "this result indicates that GAs may play a role in stamen development" and that "[p]erhaps a flower-specific production of GA that is absent in these mutants is required for the expression of critical anther-specific genes." (Emphasis supplied) Accordingly, the reference does not even clearly support the Examiner's basic proposition, let alone the logical leap which would be required to interpret the reference as being at all germane to a method for inhibition of pollinosis in polycot, gymnosperms such as Coniferophyta.

Likewise, the teaching of Nakaseko et al is limited to a method of increasing the yield of soybean (a dicot, angiosperm) by foliar application of an effective amount of a gibberellin biosynthesis inhibitor. Prohexadione-calcium (col.2, line 9) is included in a long list of gibberellin biosynthesis inhibiting type compounds that are reportedly suitable for use in the method claimed in the patent. However, there is not even a remote suggestion that a prohexadione compound, let alone any gibberellin biosynthesis inhibitor, could be used to inhibit formation of the pollen of

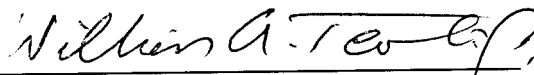
Coniferophyta (a polycot, gymnosperm). The Nakaseko et al. patent is, therefore, completely irrelevant as a reference with respect to the presently claimed invention.

In summary, the presently claimed methods which employ a prohexadione active ingredient to inhibit pollen formation in Coniferophyta cannot be considered obvious in view of the teachings of the cited references (SU abstract, journal and U.S. patent), taken alone or in any combination. First, there is nothing in the cited references that would lead a skilled person to combine them in the manner suggested by the Examiner. Secondly, there is no combination of such references that would result in the presently claimed methods.

In view of the above comments, Applicants submit that claims 1 - 10 are allowable over the cited art which has been improperly interpreted to arrive at the Applicants' invention. Reconsideration and withdrawal of all rejections are respectfully requested, along with the issuance of a Notice of Allowance. Applicants invite the Examiner to telephone the undersigned attorney of record if the Examiner feels such a call would advance the prosecution of the above-identified application.

Respectfully submitted,

USPTO Customer No. 26748
Syngenta Crop Protection, Inc.
Patent and Trademark Dept.
410 Swing Road
Greensboro, NC 27409
(336) 632-7895


William A. Teoli, Jr.
Attorney for Applicants
Reg. No. 33,104

Date: September 27, 2006